

**U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT**

**INSTRUCTIONS FOR USING**

**THE MODEL DECLARATION OF COVENANTS AND RESTRICTIONS**

**WITH PERMIT APPLICATIONS UNDER SECTION 404 OF THE CLEAN WATER**

**ACT AND SECTION 10 OF THE RIVERS & HARBORS ACT OF 1899**

**1. COMPENSATORY MITIGATION AND PERMITTING**

Prospective applicants for permits from the U.S. Army Corps of Engineers, ("Corps of Engineers") Savannah District, Regulatory Branch under Section 404 of the Clean Water Act (33 U.S.C. 1344) may decide to perform what is known as "compensatory mitigation" in return for unavoidable impacts to waters of the United States including wetlands due to the activities or work covered by a permit. A Declaration of Covenants and Restrictions is used to place permanent conservation restrictions on property containing wetlands, wetland buffers, upland and streamside lands. It is also used with banking instruments and with enforcement action settlement agreements.

The Declaration of Covenants and Restrictions should be utilized with individual tracts of land ten acres or greater or with 5000 linear feet of intermittent and/or perennial streamside land approved by the Corps of Engineers. If a less amount of acreage is accepted, the particular and special ecological benefits should be clearly stated. These conservation restrictions significantly limit the property's future use. Declarations of Covenants and Restrictions and exhibits must be approved prior to recording.

The tracts should contain wetlands or streamside lands that are being restored, enhanced or preserved as compensatory mitigation along with buffers and uplands that add to the ecological function of the aquatic site. Wetland creation acreage proposed as compensatory mitigation should not initially be considered for placement in a restrictive covenant. Upon completion of the creation project, the required monitoring and meeting of all success criteria, property on which creation has been successful may later be considered for placement in the restrictive covenant.

Upon approval by the Corps of Engineers, alternative compensatory mitigation options also include acquisition of credits from a permitted wetland or streamside lands mitigation bank and/or payment of an in lieu fee to the Georgia Land Trust Service Center in Athens, Georgia. The Savannah District web site provides additional information on banks and payment of in lieu fee to land trusts. Check with the Savannah District web site, (<http://www.sas.usace.army.mil/>) to view the latest draft Declaration of Covenants and Restrictions and instructions. Select "Permitting Info" yellow box.

**2. APPLICANT AND OWNER OF LAND MUST BE THE SAME**

The applicant for a (permit, mitigation bank or enforcement action settlement agreement) is required to be owner of the property being proposed for compensatory mitigation prior to the recording of a Declaration of Covenants and Restrictions. Contractual agreements between the applicant and a third party owner of land, regarding placement of covenants and restrictions on land not owned by the applicant, will not be considered. Copies of deeds showing ownership of the land by the permit holder will be required.

### 3. CONSERVATION EASEMENT

The Declaration of Covenants and Restrictions is not intended for use with conservation easements. Conservation easements are held by qualified land trust groups or "holders" pursuant to the Georgia Uniform Conservation Easement Act, O.C.G.A § 44-10-1 et seq. Conservation easements are considered occasionally by the Corps of Engineers for use with permit actions and banking instruments as additional protection of property. Additional credits from a bank may be approved where a conservation easement is granted to a qualified "holder" land trust, for purposes of long term monitoring and stewardship of the property. A conservation easement may be considered following the recording of a declaration of covenants and restrictions. The holder of a conservation easement may not be a bank sponsor or have an interest in the bank. The Corps will make the final determination regarding the approval of the holder of an easement, and the wording of the conservation easement.

### 4. ATTORNEY

A Declaration of Covenants and Restrictions is a legal document and must be prepared by, or at a minimum, reviewed by an **attorney** prior to submittal for review by the Office of Counsel, Corps of Engineers, Savannah District.

There should be a determination that the applicant has clear title to the property free of encumbrances which would negate the intent of the parties to perpetually protect the wetlands, streamside lands and buffers. If there is a deed to secure a debt, the attorney should prepare a Consent and Joinder and obtain proper signature thereto by the financial institution. Proper authority to sign as owner/covenantor, is essential. With corporations, there should be a certificate of corporate authority. Proper recordation is also necessary for purposes of record notice and assurance that the Declaration of Covenants and Restrictions will be within the chain of title on future record title searches. The section on amendments should be reviewed with the applicant.

An owner of the property who is not a bank sponsor, should seek separate legal counsel from counsel for the bank sponsors. This is to assure that the owner of the property fully understands the legal obligations of perpetually restricting the property by recordation of a Declaration of Covenants and Restrictions. The Declaration of Covenants and Restrictions will reference consideration, the receipt and sufficiency whereof must be acknowledged by the owner. There should be a written agreement between the owner and bank sponsors if the owner is not a bank sponsor, and said agreement should be made an exhibit to the Declarations of Covenants and Restrictions.

A draft of the Declaration of Covenants and Restrictions with exhibits should be forwarded to the Corps of Engineers with a cover letter providing name, telephone and address of the applicant's attorney as the point of contact. All correspondence should reference the Corps of Engineers permit number, enforcement action number or banking instrument number. The number is referenced on all correspondence from the Corps.

### 5. RESIDENTIAL DEVELOPMENT

The Corps of Engineers considers mitigation on-site in a proposed residential development. However, only wetlands, wetland buffer or streamside lands proposed for placement in an **open or common area** will be considered for purposes of restriction by a Declaration of Covenants and Restrictions. This open or common area is generally owned by the developer and subsequently conveyed to a homeowners association. The developer should consider completing restoration or enhancement of wetlands required by the permit prior to transfer of ownership of the property to homeowners. The language in the Declaration of Covenants and Restrictions should address the responsibilities of the common owners for financial and legal responsibilities associated with long term

management of the open or common area. Open or common area property will not be considered for placement in a covenant if residential lots have been sold prior to the recording of the Declaration of Covenants and Restrictions.

## **6. COMMERCIAL OR INDUSTRIAL DEVELOPMENT**

On property zoned for commercial or industrial development the Corps of Engineers considers mitigation on-site for proposed projects. However, restrictive covenants will only be considered where the restricted property is set aside as a separate single lot or as acreage separately surveyed and not made a part of lots to be developed as commercial or industrial development. Provisions for long term management of the restricted property and the legal entity who will be responsible for the long term management should be addressed in the mitigation plan and the Declaration of Covenants and Restrictions.

## **7. SPECIFICATION OF ECOLOGICAL FUNCTIONS**

There should be a short summary recital of the existing and/or proposed natural, scenic, open space, aquatic, riparian, biological and ecological functions of the property proposed for placement in a Declaration of Covenants and Restrictions.

As to preservation mitigation lands, provide a summary ecological description of the aquatic, vegetative, forested, animal and general wildlife habitat, and the hydrological and/or riparian system. As to restoration and enhancement mitigation land, provide the proposed aquatic, vegetative, and/or riparian ecology and state the expected benefits to the ecological function of the property.

Provide a description of the aquatic site whether riverine, forested, freshwater adjacent to tidal area, isolated, pine flatwood, lake, other impoundments, borrow pit or otherwise. Describe the vegetation and state whether it is planted or natural or both. State any other conservation functions. Discuss the benefit of any upland, wetland buffer, or streamside lands to the ecology of the site. Address the biological integrity of the land in the vicinity. Summarize the above information and insert in the restrictive covenant. To the extent the above information is discussed in full in an executive summary of the mitigation plan and is five pages or less, it may be attached as an exhibit.

Please provide dated pictures (can be digital camera print outs) of the mitigation site/s for viewing by the Corps of Engineers. Pictures should not be made an exhibit to the covenant. See the model draft Declaration of Covenants and Restrictions for location of the ecological function/s wording or exhibit.

## **8. SURVEYS**

Applicants are generally required to submit an initial determination of the wetland boundaries to the Corps of Engineers for verification. The delineation, once verified by the Corps of Engineers, becomes the jurisdictional determination of wetlands on site.

In most cases, a portion of or all of the wetlands on site that are not proposed to be impacted for fill and/or dredge, may be considered for on site mitigation. That is, certain wetlands on site may be proposed in the mitigation plan, to remain undeveloped as preserved, restored or enhanced wetlands. Generally a buffer will be required around the wetland area at the time that the mitigation plan is accepted. There is frequently a requirement that the wetlands and buffers be restricted by use of the Declaration of Covenants and Restrictions. The Declaration of Covenants and Restrictions requires a survey and legal description of the tract/s including both wetland and buffer. The initial wetland delineation survey may include the buffer around the wetlands so that a subsequent survey addressing the buffers and wetlands may not be necessary or may require minor modification from the delineation survey.

## PROVIDE THIS PAGE TO SURVEYOR

**Surveys must contain the seal of a Georgia Registered Land Surveyor. The surveyor should determine the survey plat size required by the Office of the Clerk of the Superior Court in the county where the property is located.** Each county clerk may have different requirements of plat size or other requirements relevant to recording plat surveys. All bearings and distances and coordinate values on the survey should be large enough to be clearly seen. If the survey consists of more than one drawing, reference the number of drawings.

The survey should show the bearings and distances of the property (wetlands, buffer, streamside lands and uplands.) A legend should be used to indicate that portion that is wetland and that portion that is buffer. In addition, in order to straighten certain survey lines, the surveyor may suggest to the applicant that so long as the required buffer is in place, additional buffer may be added for purposes of creating a tract with straighter lines. This may be helpful in those cases where the wetlands curve repeatedly, necessitating more calls than a straight line. The applicant may receive some additional mitigation credit for the additional buffer included in the property description over and above the minimum buffer requirements. To determine if that is the case, the applicant should contact the Corps of Engineers project manager.

A survey plat should show:

A. Bearings & distances, and coordinate values of the wetland and any wetland buffer, upland or streamside property that is the subject of this Declaration of Covenants and Restrictions.

B. The bearings & distances should be tied in to at least one known coordinate, with a statement of precision closure < 1:10,000. Use NAD 1983 DATUM.

C. Use a legend to identify the wetlands, wetland buffers, streamside lands, upland or other restricted areas, and state the total number of acres in the restricted tract/s. Provide a vicinity map identifying roads adjacent to the site.

D. Provide a minimum of three or four latitude/longitude coordinates which when connected will form a polygon that approximately circumscribes the mitigation area.

E. Surveyor shall enter "Note" on survey that "Wetlands, Wetland Buffers and/or Streamside Lands may be under the jurisdiction of the U.S. Army Corps of Engineers, permit number \_\_\_\_\_ and are protected by a recorded Declaration of Covenants and Restrictions." Provide the total number of acres in the tract/s. Provide the U.S. Corps of Engineers permit or action number.

The survey should show existing, permitted or proposed utility or road-crossings and state the type of utility (water, communication, power, fuel, sewer ). If the applicant intends to allow public use of the property, show any proposed paths, trails, education center structures, parking area or other proposed use. Show existing structures, roads and towers.

Surveyors should coordinate with the applicant and the applicant's attorney in preparation of this exhibit for the Declaration of Covenants and Restrictions real property document. The attorney will submit the survey at the time the draft restrictive covenant and exhibits are forwarded to the Corps of Engineers. The Corps of Engineers must approve all surveys prior to recording for use with the Declaration of Covenants and Restrictions.

## **9. AMENDMENTS**

Proposed amendments must be pre-approved by the Savannah District Office of Counsel. Amendments will be considered only in exceptional circumstances. Do not anticipate that amendments will be granted. Wording regarding future proposed utilities, road crossings, boardwalks, expansions or other potential future impacts to the property should be included in the original document.

### **(a) Owners of the restricted property**

If the permit holder records a Declaration of Covenants and Restrictions as a condition of the permit and subsequently submits a request for a modification to the permit for purposes of impact to the property protected by the Declaration of Covenants and Restrictions, a Joint Public Notice will be issued.

The Joint Public Notice ("JPN") will contain information addressing the fact that the modification proposes to impact property required as mitigation and protected by a recorded Declaration of Covenants and Restrictions. The JPN will further state the applicant's position as to why the impact is unavoidable. The proposal to impact the restricted lands should not be submitted based on financial hardship or benefit, design concerns or growth pattern in the area. The fact that the proposed impact is not to wetland, but to wetland buffer or upland associated with a wetland or stream, should not be assumed to be an insignificant impact to lands protected by the Declaration of Covenants and Restrictions for their conservation value.

A determination may be made that the proposed impact substantially reduces the value and function of the wetlands on the entire tract. Mitigation for impacts to an area protected by the covenant may be subject to a significantly higher impact mitigation ratio than the standard operating procedure.

### **(b) Where the applicant does not own the restricted property**

Where an applicant for a new permit proposes unavoidable impacts to property not owned by the applicant and subject to terms of a Declaration of Covenants and Restrictions, the applicant should first contact the owner of the property to determine if the owner agrees to said impacts. Modification of permits for the purpose of impacting property restricted by Declaration of Covenants and Restrictions will not be considered due to financial hardship or benefit, design concerns or growth in the area. Impacts will be allowed only in exceptional cases. If the application goes forward, a JPN will be issued.

The JPN will contain information addressing the fact that the project proposes to impact property required as mitigation on a previous permit and is protected by a Declaration of Covenants and Restrictions. The JPN will further state the applicant's position as to why the impact is unavoidable. The fact that the proposed impact is not to wetland, but to wetland buffers or upland associated with wetland or streams, should not be assumed to be an insignificant impact to lands protected for their conservation value by the Declaration of Covenants and Restrictions. A determination may be made by the Corps of Engineers that the proposed impact substantially reduces the value and function of the wetlands on the entire tract. Mitigation for impacts to an area protected by the covenant may be subject to a significantly higher impact mitigation ratio than the standard operating procedure.

Where there is a determination to issue the permit with provision for impact to the protected land and where mitigation has been provided for the impact to the restricted land, the Declaration of Covenants and Restrictions must be amended or extinguished after approval and signature by the Corps of Engineers.

### **(c) Condemnation authority - Governmental Entities**

Governmental entities considering the exercise of condemnation authority should give consideration to the protected status of property placed in a Declaration of Covenants and Restrictions and should be considered as property protected for its conservation values during the application alternatives analysis.

If the property is taken, in whole or in part, by exercise of the power of eminent domain, a JPN will be issued on the application of the governmental entity, addressing the proposed unavoidable impact to waters of the United States, buffers, and streamside lands protected by a Declaration of Covenants and Restrictions. The fact that the impact proposed is not to wetland, but to wetland buffer or upland, should not be viewed as an insignificant impact to lands protected for their conservation value by the Declaration of Covenants and Restrictions. A determination may be made that the proposed impact will substantially reduce or destroy the functions and values of wetlands in the restricted property in part or in whole. Mitigation for impacts to the property protected by the restrictive covenant may be subject to a significantly higher impact mitigation ratio than the standard operating procedures and will be in addition to the mitigation considered on any new permit application. If a permit is issued, the applicant will be required to amend or extinguish the recorded Declaration of Covenants and Restrictions after review, approval and signature by the Corps of Engineers.

## **10. MODEL DECLARATION OF COVENANT AND RESTRICTION FOR DRAFTING**

A document entitled, "Model Declaration of Covenants and Restrictions," is provided by the U.S. Corps of Engineers, Savannah District, Regulatory Branch on its web site for use in drafting covenants and for instructions in preparing required exhibits. Please read the model draft to determine information, documents and exhibits required. Consult with your attorney, environmental consultant, engineer and surveyor. Provide an attorney as a point of contact. Do not execute or record the Declaration of Covenants and Restrictions until approved by the Corps of Engineers, Savannah District, Office of Counsel. If changes or additions to the draft wording are submitted in the draft restrictive covenant language, the Office of Counsel will consult with the Corps of Engineers Regulatory Branch project manager in order to determine if the changes or additions were pre-approved. Please underline the modified or additional wording for quick reference.

Forward draft restrictive covenants and exhibits to Rebecca Rowden, Assistant District Counsel, Office of Counsel, Corps of Engineers, 100 West Oglethorpe Ave., Savannah, Georgia 31402-0889. (Telephone Number 912-652-5123 ). Consultations with the Office of Counsel in Savannah, Georgia can be requested to review and discuss draft documents. Allow two to three weeks after draft is received by Office of Counsel, for final review and comment. Add additional time if the draft language is modified or additional language is added. Once approved, a letter will be forwarded to the attorney with directions for recording.

## MODEL DECLARATION OF COVENANTS AND RESTRICTIONS

Review the general instructions provided in the document entitled, "Instructions For Using the Model Declaration of Covenants and Restrictions" The following "Model Declaration of Covenants and Restrictions" document is provided for drafting purposes. Please check the Savannah District, Regulatory Branch web site, <http://www.sas.usace.army.mil/> regarding permitting information in order to view and access the most current draft covenant suggested for use. The web site is generally updated yearly. Do not execute and record the declaration and exhibits until approved in writing by the Office of Counsel, Corps of Engineers, Savannah District.

At the top of the page,  
provide the name and mailing  
address of the attorney and/or  
law firm for purposes of  
notice to the Clerk of the  
Superior Court, and for purposes  
of receipt by mail at such time as it is  
recorded.

### DECLARATION OF COVENANTS AND RESTRICTIONS (MODEL/DRAFT)

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Covenant") is  
hereby made by \_\_\_\_\_,

Insert the name/s of the owner/s of the property. The name should be the same as shown on the deed of title. If ownership is pursuant to a Complaint filed in accordance with condemnation/eminent domain authority with a subsequent Order of a court, provide the full legal citation with the style of the case, forum, date and court assigned number.

The permittee named in the permit letter and the owner/s of the land subject to this covenant, should be the same person or legal entity. If this is not the case, then clarification should be provided.

Clarify agency, partnership, limited liability partnership or company, corporate, subsidiary or other relationship of the person or entity to whom the permit was issued to the owner/covenantor as owner of the land. The purpose of clarification is to make clear the relationship between the entity to whom the permit or banking instrument may have been issued if different from the de facto permittee as owner/s of the land and as covenantor/s.

If the permittee is an employee of, or in an office or department within, a governmental entity, reference the relationship of the permittee to the governmental entity named in the deed of title or court order.

the undersigned owner/covenantor. Covenantor is owner in fee simple of a certain tract of real property in (County), Georgia. This tract of land is ( **Note: State whether the property being placed in the restrictive covenant is a portion of, or the same property**) having been conveyed on (date) from ( name of Grantor ), to ( name of Grantee), and recorded in (County), Georgia, at Book (number), Page (number), in the Office of the Clerk of Superior Court and is by reference incorporated herein for a description of all other legal purposes. ( **Provide for all grantor/grantee conveyances if more than one owner by book and page/s. Provide for condemnation/eminent domain citation here.**)

**\*Provide copies of the Grantor/Grantee title Deeds, Complaints, Decrees or Orders referenced above for review to Office of Counsel. Office of Counsel will concur that the name of Owner/Covenantor is the same as shown on the deed conveying title to Grantee or the same as provided on the court document. Owner/Covenantor should provide in cover letter that title to land is free of deeds to secure debt, easements affecting the use of the land as a conservation resource, and that there is no outstanding litigation involving issues of title or use of the property. If title is acquired due to condemnation, provide a copy of the Complaint and Judgment, and where required, Judgment of a court confirming the award.**

## PREMISES

WHEREAS, Covenantor was issued a (select one) (1) permit, (2) banking instrument, or entered into a (3) settlement agreement), Corps of Engineers Action Number \_\_\_\_\_, dated \_\_\_\_\_ pursuant to Section 404 of the Clean Water Act ( 33 U.S.C. 1344), and/or Section 10 of the Rivers and Harbors Act of 1899 ( 33 U.S.C. 403) under the regulatory authority of the Department of the Army, Corps of Engineers, Savannah District, ("Corps of Engineers"), setting forth authorization for certain dredge and/or discharge of fill activities in waters of the United States, including wetlands and streams, and,

WHEREAS, said (permit, banking instrument, settlement agreement) is attached hereto as Exhibit A and by this reference is made a part hereof; and,

**Exhibit A - Attach the substantive document/s (1) letter or document authorizing the permitted activity, "the permit" (2) letter or document conditionally authorizing the permitted activity, (3) letter authorizing an after-the-fact permit and a settlement agreement or (4) an authorizing letter and a banking instrument, as Exhibit A. An executive summary of the banking instrument may be used in lieu of the entire banking instrument. There may be more than one document such as a conditional permit and a settlement agreement. Do not rely on the Corps Regulatory Branch to provide a copy of the authorizing letters, permit, banking instrument or settlement agreement for use as Exhibit A.**

WHEREAS, the consideration for this Declaration of Covenants and Restrictions is the issuance of the document referenced in Exhibit A by the United States Army Corps of Engineers, the receipt and sufficiency whereof are hereby acknowledged; and, **(If a banking instrument is approved, use the language for commercial or governmental wetland and/or streamside banks below in lieu of this paragraph.)**

WHEREAS, said permit expressly requires mitigation for the dredge and/or discharge of fill of existing jurisdictional waters of the United States including wetlands pursuant to the Clean Water Act, Section 404, and/or the Rivers and Harbors Act, Section 10; and, **(If a banking instrument is approved, use the language for commercial or governmental wetland and/or streamside banks below in lieu of this paragraph.)**

WHEREAS, **(This language is to be used with a commercial wetland mitigation bank)** the Property is approved as a commercial wetland and/or streamside lands mitigation bank pursuant to the terms and conditions of the **(Insert the name of the banking instrument)**, said document being incorporated by reference. The purpose of the bank is to generate credits to compensate for wetland impacts that have been determined unavoidable after consideration of avoidance and minimization on Section 404, Clean Water Act and Section 10 of the Rivers & Harbors Act of 1899 permit actions. Credits from the bank are sold in return for a fee agreed



upon by the banker and the permittee where the Corps of Engineers has approved the use of banking credits as mitigation in whole or in part on permits issued. The owner/covenantor of the Property placed in this Declaration of Covenants and Restrictions, in return for consideration from execution of the banking instrument, the receipt and sufficiency whereof being acknowledged, agrees to certain restoration, enhancement, and preservation of wetlands and/or streamside lands on the Property. The banking instrument sets forth the success criteria and determination of credit releases. At such time credits are sold from the bank, the Property is to remain subject to this declaration of covenants and restrictions in perpetuity.

**WHEREAS, ( This language is to be used with the permitting of a government owned wetland or streamside lands mitigation bank. )**

the Property is approved as a wetland and/or streamside lands mitigation bank pursuant to the terms and conditions of the **(Insert the name of the banking instrument)** , said document being incorporated by reference. The purpose of the bank is to generate credits for use by **(insert the state department, county or municipal entity)** as mitigation on other permit actions where wetland impacts have been determined unavoidable after consideration of avoidance and minimization. The owner/covenator agrees to certain restoration, enhancement, and preservation of wetlands, or streamside lands on the Property. The banking instrument sets forth the success criteria and determination of credit releases. At such time as credits in the bank are released, the Property is to remain subject to this declaration of covenants and restrictions in perpetuity.

WHEREAS, Exhibit B is a dated platted survey with seal affixed by a Georgia registered surveyor identifying the wetlands, wetland buffers, uplands, and/or streamside lands ("Property") and is made a part hereto and by this reference is incorporated. The survey identifying the Property by bearings and distances and coordinate values has been recorded at (enter the recorded location by plat book, drawer, page or otherwise).

**( Reference instructions regarding surveys in the Instructions for Using the Model Declaration of Covenants and Restrictions. Surveys not in compliance with the directions will be returned. Surveys must be conducted by a Georgia Registered Land Surveyor)**

WHEREAS, the property consists of \_\_\_\_\_ acres in \_\_\_\_\_ tracts of land: and,

WHEREAS, a legal description of the property is attached hereto and by reference is made a part hereto as Exhibit C; and,

**(Exhibit C is a separate legal description of the restricted property describing all the tracts or parcels of land lying in a particular district, land lot or other identifying references. If the metes and bounds and coordinate values are provided on the survey, and the survey is plat size, the legal description may provide that the land is more particularly described on the survey exhibit and made a part of the legal description by reference.)**

WHEREAS, the Property is being preserved, restored, or enhanced as a wetland, buffer to wetlands, streamside land, upland buffer to waters of the United States, or open area associated with aquatic and general wildlife habitat.

WHEREAS, the environmental conservation functions and values are of importance to the people of the State of Georgia and the general public, and are worthy of preservation, restoration and enhancement. The functions and values are summarized and described in Exhibit D, attached hereto and made a part hereof, and

**As to mitigation property being restored or enhanced, provide the proposed aquatic, riparian, vegetative, and/or riverine ecology and state the expected benefits to the ecological function of the Property.**

**As to property set aside as preservation, provide an ecological description of the aquatic, vegetative, forested, and general wildlife habitat, hydrological and/or riverine system.**

**Provide a description of the aquatic site and state whether it is riverine, forested, freshwater adjacent to tidal area, isolated, pine flatwood wetland, lake, other impoundment, borrow pit or otherwise. Provide a description of the vegetation as to whether it is planted or natural or both. State any other conservation functions. Discuss the benefit of upland, wetland buffer or streamside lands to the ecology of the site. Address the biological integrity of the land in the vicinity and the contribution of the restricted area to the ecology of the area.**

**If an executive summary has been prepared in the application and addresses the above functions in full attach as an exhibit and incorporate by reference.**

WHEREAS, the Property has been set aside as open or common area and will not be made part of any residential lot in a residential subdivision. A management plan will be developed for long term protection of the Property.

NOW, THEREFORE, as consideration for the issuance of the referenced permit, (or as consideration for the issuance of the banking instrument, or the settlement agreement ) and as required mitigation for dredge and/or discharge of fill in waters of the United States including wetlands, Owner/Covenantor has promised to place certain restrictions on the Property exclusively for conservation purposes, in order that it shall remain substantially in its open, natural and scenic condition in perpetuity.

1

The terms and conditions of this Declaration of Covenants and Restrictions shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the restricted property. It shall set forth the terms and conditions of this document either by reference to this document and its recorded location or set forth in full text. It shall not be amended or extinguished except by written approval of the Corps of Engineers.

2

Except as necessary to carry out wetland restoration, enhance the natural habitat, or carry out other mitigation or maintenance approved by the Corps of Engineers, the actions encompassed as prohibited by this covenant shall include, but shall not be limited to the following:

A. Clearing, cutting or mowing:

- B. Earthmoving, grading, removal of topsoil, cultivation, burning, filling or changes in the topography of the land in any manner;
- C. Placement of refuse, wastes, sewage, dredged spoil, solid waste, incinerator residue, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, or agricultural waste on the Property;
- D. Draining, ditching, diking, dredging, channelizing, pumping, impounding, excavating;
- E. Diverting or affecting the natural flow of surface or underground waters within, or out of the Property;
- F. Mining, drilling;
- G. Burning, systematically removing or cutting or otherwise destroying any vegetation, except for pruning, or removal of diseased or unsafe trees conducted in accordance with current scientifically bases practices recommended by the U.S. Forest Service, the Georgia Forestry Commission, or other responsible agency;
- H. Spraying with biocides;
- I. Introducing exotic species on the Property or otherwise altering the natural state of the wetlands;
- J. Grazing of domesticated animals;
- K. Raising of any structure in the wetlands, streamside buffers or wetland buffers, whether temporary or permanent, except that minimal structures for the observation of wildlife and wetlands ecology may be constructed with the prior approval of the Savannah District Engineer;
- L. Display of billboards, signs, or advertisements on or over the Property, except for the posting of no trespassing signs, signs indicating the property is for sale, signs identifying the conservation values of the property or their protection, and/or signs identifying the owner of the property.

### 3

Existing utility lines, road crossings and structures, if any, are shown on the survey, Exhibit B. (List recorded easements or right of ways and the recorded location of said documents. Provide copy.) Proposed utility lines and/or road or path crossings, if any, are shown on the survey, Exhibit B. The proposed crossings and utility lines may be constructed on the Property as shown on Exhibit B upon application and receipt by Covenantor of such permits as are required by the Clean Water Act Section 404 or Rivers and Harbors Section 10.

### 4.

Covenantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

B. There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned;

C. Covenantor and the Property are in compliance with all federal, state and local laws and there is no pending or threatened litigation in any way affecting, involving or relating to the Property.

5

Covenantor, its personal representatives, heirs, executors, administrators, successors and assigns, shall retain all other customary rights of ownership, including but not limited to the exclusive possession of the property, and the right to use the property in any manner which would not defeat or diminish the intent of this Declaration of Covenants and Restrictions.

6

It is expressly understood and agreed that this covenant does not grant or convey to members of the general public, any rights of ownership, interest in, or use of the protected property.

**(If Covenantor does intend to manage the land for use by the public, restate the terms referencing specifically the planned or intended use of the property. Plans for use of the mitigation property by the public should be submitted to and approved by the Corps of Engineers project manager prior to submitting this draft for review.)**

7

The United States Department of the Army, Corps of Engineers, may enforce the provisions of this covenant pursuant to the Clean Water Act and/or the Rivers & Harbors Act of 1899 and implementing regulations. The Government may bring an action at law or in equity against any person/s or entity violating this covenant, and may seek injunctive relief to restrain any person from violating any covenant contained herein. However, no violation of this covenant shall result in a forfeiture or reversion of title. In an enforcement action under the Clean Water Act, the Corps of Engineers may be entitled to a complete restoration for any violation, as well as any other remedy available under law or equity.

8

The Corps of Engineers, Savannah District shall at reasonable times and upon notice to the owner, have the right of ingress and egress to inspect the property and in order to monitor

compliance and enforce the terms and conditions of the permit and this Declaration of Covenants and Restrictions.

9

This covenant shall be binding upon the Covenantor, its heirs, successors and assigns, and upon occupiers or users of the protected property forever. This covenant shall not terminate upon some fixed amount of time, but shall run with the land both as to benefit and as to burden. This covenant is established as a conservation benefit to the general public for the purpose of preserving waters of the United States, including wetlands, wetland buffers, streamside lands, adjacent uplands, and open areas associated with aquatic and general wildlife habitat. Furthermore, this covenant carries out the statutory requirement of Section 404 of the Clean Water Act (33 U.S.C. §1344) and Section 10 of the Rivers & Harbors Act of 1899 (33 U.S.C. § 403).

10

Covenantor shall execute and record this instrument in timely fashion in the Office of the Clerk of Superior Court in the county in which this Property is located and provide the Corps of Engineers with a copy of the recorded restrictive covenant and exhibits.

IN WITNESS WHEREOF Covenantor has duly executed this covenant on this the \_\_\_\_ day of \_\_\_\_\_.

### **Directions for Signature Page**

(1) The signature should be made by the owner/s-covenantor/s. All holders of title to the property should sign. Type the full names/s and title below the signature line.

(2) If the property is encumbered with a deed to secure debt, prepare a "Consent and Joinder" signature page for purposes of having the holder of a deed to secure debt, consent and join in this Declaration of Restrictive Covenant and providing subordination of the deed to secure debt, to the covenant.

(3) Prepare the signature page according to the legal authority of the covenantor to sign and state the capacity in which the person/s is signing and the entity for whom it is signed. If signing for a corporation, provide a Certificate of Corporate Authority. If prior approval by resolution and adoption of a county commission, governing body of a municipality or other government entity is required, provide copies of the resolution and adoption documents.

(4) Provide for signature/s to be signed sealed and delivered in the presence of (1) an unofficial witness and (2) a notary public affixing seal. Provide that the (covenantor) personally appeared before (the notary public), the undersigned witness, and notary makes oath that (he/she) saw the within named, sign the Declaration of Covenants and Restrictions, and that (he/she) with the other witness named above witnessed the execution thereof. Provide the street address, city, state, zip code, of the owner. Prepare a draft signature page but do not have it executed until the entire document and exhibits are approved.

### **Submit For Approval prior to Recording**

(1) Forward the draft restrictive covenant and exhibits along with any additional documents indicated in the directions as requested for preparation and review, to the Regulatory Branch, Attention: ( Insert the name of the Corps of Engineers project manager,) Corps of Engineers, Regulatory Branch.

**(a) If the project manager is in the Savannah, Georgia office, the address is: 100 West Oglethorpe Avenue, Savannah, Georgia, 31402-0889.**

**(b) If the project manager is in the Morrow, Georgia office, the address is: The Plaza, Suite 130, 1590 Adamson Parkway, Morrow, Georgia, 30260-1763.**

**(c) If the project manager is in the Albany, Georgia office, the address is: 1104 North Westover Road, Suite 109, Albany, Georgia, 31707.**

**Request review of the declaration of restrictive covenants by the Office of Counsel, Rebecca Rowden, Assistant District Counsel, Corps of Engineers, 100 W. Oglethorpe Ave., Savannah, Ga. 31402-0889. Please reference the Corps of Engineers permit number as provided on correspondence from the Corps. Provide the name, telephone and mailing address of the attorney who is the point of contact for this draft document. The Office of Counsel will provide a written letter of approval with information regarding recording. For questions regarding this document, call Office of Counsel call 912-652-5123.**

## **Forwarding Copy of Final Recorded Document**

**Upon receipt by the Savannah District Office of Counsel, of a copy of the recorded Declaration of Restrictive Covenant properly executed, the restrictive covenant requirement of the permit action, banking instrument or settlement agreement will be completed.**